IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 10TH JULY 2007 / 19TH ASHADHA 1929

Bail Appl..No. 4149 of 2007()

CRIME NO. 93/05 OF CHAKKARAKAL POLICE STATION, KANNUR

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PETITIONER/ACCUSED

K.MUSTHAFFA, S/O.AHAMMEDKUTTY,
AGED 34 YEARS, KAPPATTAYIL HOUSE,
INDIRA NAGAR, PERUMBADI, VIRAJPET.

BY ADV. SRI.C.P.PEETHAMBARAN

RESPONDENTS: COMPLAINANT

STATE OF KERALA, REPRESENTING S.H.O.,
CHAKKARAKAL POLICE STATION, KANNUR DISTRICT,
REP. BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 10/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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B.A.No. 4149 of 2007

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Dated this the 10th day of July, 2007

O R D E R

Application for anticipatory bail. The petitioner apprehends arrest in a pending proceedings, where he faces indictment, inter alia, under Section 498A I.P.C. Cognizance has been taken. Final report has been filed by the police. The petitioner has not appeared before the learned Magistrate so far. Reckoning him as an absconding accused, non-bailable warrant and coercive processes have been issued by the learned Magistrate.

2. The learned counsel for the petitioner submits that the petitioner is innocent. His absence was not wilful or deliberate. He allegedly did not have any prior information about the pendency of the case. The petitioner is now willing to co-operate with the court for the expeditious disposal of the case against him. But he apprehends that if he surrenders and applies for bail, his application may not be considered by the learned Magistrate on merits, in accordance with law and expeditiously. It is in these circumstances prayed that appropriate directions may be issued in favour of the petitioner.

3. It is trite after the decision in **Bharat Chaudhary** v. **State of Bihar** (IR 2003 SC 4662) that powers under Section 438 Cr.P.C. can be invoked even in favour of a petitioner, who apprehends arrest in the pending case on the strength of a non-bailable warrant issued by the court. Even that is not by itself sufficient to justify the invocation of the jurisdiction under Section 438 Cr.P.C. I am unable to find any compelling reasons which would justify invocation of the jurisdiction under Section 438 Cr.P.C.

4. It is certainly for the petitioner to appear before the learned Magistrate and apprise the learned Magistrate the circumstances under which he could not earlier appear before the learned Magistrate. I have no reason to assume that the learned Magistrate would not consider the application for bail to be filed by the petitioner when he surrenders before the learned Magistrate, on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific direction appears to be necessary. Sufficient general directions have already been issued by this Court in the decision in **Alice George** v. **Dy.S.P. of Police** (2003 (1) KLT 339).

4. This application is accordingly dismissed. I may however hasten to observe that if the petitioner appears before the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass orders on merits, in accordance with law and expeditiously - on the date of surrender itself.

(R. BASANT)
Judge

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